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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/774,339	02/06/2004	Eugene A. Helmsie	60,137-207;136-3032-U	5319

82074 7590 12/28/2009  
Carlson, Gaskey & Olds/Masco Corporation  
400 West Maple Road  
Suite 350  
Birmingham, MI 48009

EXAMINER
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LE, HUYEN D

ART UNIT	PAPER NUMBER
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3751

NOTIFICATION DATE	DELIVERY MODE
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12/28/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ptodocket@cgolaw.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/774,339	<b>Applicant(s)</b> HELMETSIE ET AL.	
	<b>Examiner</b> Huyen Le	<b>Art Unit</b> 3751	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 November 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 13-15, 18 and 21-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 13-15, 18 and 21-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 13-15, 18, 21-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Armstrong (2,036,184).

Regarding claim 18, the Armstrong reference discloses a surround comprising a base portion (a floor portion of a room); a first wall portion (the left wall of the room); a second wall portion (the right wall of the room); and a corner portion (formed by the meeting portions of the walls including member 1) engaged with the base portion, the first wall portion and the second wall portion, the corner portion comprising a multiple of horizontal shelf slots (spaces between members 8,9,10) arranged vertically along a length of the corner portion, wherein the horizontal shelf slots comprise blind openings of uniform height that extends into the corner portion to support a corresponding shelves 18 and 19.

The introductory statement of the intended use have been carefully considered but deemed not to impose any structural limitations on the claim(s) distinguishable over the device of Armstrong which is capable of being used in a bathroom or shower surround.

Regarding to claim 21, at least one of the horizontal shelf slots is defined by a top wall portion 8, a bottom wall portion 9, rear wall portion 1, and an open front end.

Regarding claim 22, one of the horizontal shelf slots includes a uniform nominal depth extending into the corner portion.

Regarding claim 23, each of the horizontal shelf slots is adapted to support one of the corresponding multiple of shelves.

Regarding claim 24, the corner portion, the top wall portion 8, the bottom wall portion 9, the arcuate rear wall portion 1 comprise a single continuous piece.

### ***Response to Arguments***

3. Applicant's arguments on 11/30/2009 with respect to claim 18 have been considered but are not persuasive.
4. Applicant argues that Armstrong does not disclose horizontal shelf slots extending into the corner portion. The openings of Armstrong appear to extend entirely through the corner portion. Examiner disagrees with applicant. Figs. 1 and 3 of Armstrong show "blind openings" that are formed between spaced ends of strips 8, 9 and 10. These openings extend into the corner portion, wherein the corner portion includes members 1, 8, 9 and 10. The openings in this case do not extend entirely through the back member 1 as shown in Fig. 3.

### ***Conclusion***

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huyen Le whose telephone number is 571-272-4890. The examiner can normally be reached on Monday-Friday from 9:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Huyen Le/  
Primary Examiner, Art Unit 3751